

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NEWMONT USA LIMITED and DAWN  
MINING COMPANY, LLC,

Defendants.

NO. CV-05-020-JLQ

**ORDER GRANTING  
DEFENDANTS' MOTIONS TO  
AMEND ANSWERS, RESERVING  
UNITED STATES MOTION FOR  
PROTECTIVE ORDER, GRANTING  
LEAVE TO TAKE CERTAIN  
DEPOSITIONS, AND ORDERING  
ADDITIONAL BRIEFING ON THE  
ISSUE OF CONFIDENTIAL  
MATERIALS**

DAWN MINING COMPANY, LLC,

Third-party Plaintiff,

vs.

ORTENCIA FORD and DONNELLY  
VILLEGOS,

Third-party Defendants.

On December 15, 2006, this court held a telephonic hearing on Defendant Newmont USA Limited's Motion for Leave to Amend Answer to Add Affirmative Defenses, (Ct. Rec. 51), Defendant Dawn Mining Company's Motion for Leave to Amend Answers to Add Affirmative Defenses, (Ct. Rec. 54), and Plaintiff United States' Motion for Ruling on Record Review and Protective Order. (Ct. Rec. 48). **Paul J. Gormley** represented the United States of America. **Elizabeth H. Temkin, Michael R. Thorp,** and **Nathan M. Longenecker** represented Defendant Newmont USA Limited. **Mark W. Schneider** and **Matthew D. Diggs** represented Defendant Dawn Mining Company LLC.

This Order is intended to memorialize the oral rulings of the court. Accordingly,  
**IT IS HEREBY ORDERED:**

(1) Defendant Newmont USA Limited's Motion for Leave to Amend Answer to

1 Add Affirmative Defenses and Defendant Dawn Mining Company's Motion for Leave to  
2 Amend Answers to Add Affirmative Defenses are **GRANTED**. (Ct. Rec. 51 & 54).  
3 Defendants shall serve and file their amended answers within **ten (10) days** of this Order.  
4

5 (2) Plaintiff United States' Motion for Ruling on Record Review and Protective  
6 Order is **RESERVED** and may be renewed at an appropriate future date. (Ct. Rec. 48).  
7 However, Defendants are granted leave to conduct a single half-day deposition of EPA  
8 Project Manager Ellen Hale and a single half-day deposition of John Thackston, Midnite  
9 Mine site manager for URS Corporation.

10 (3) Within **ten (10) days** of this Order, the Government shall file and serve a  
11 memorandum of points and authorities to support the Government's decision to withhold  
12 documents from the Defendants that the Government alleges are confidential because of  
13 the Memorandum of Agreement between the Environmental Protection Agency and the  
14 Spokane Indian Tribe, or because the documents have been designated as confidential by  
15 the Tribe. The Government shall address the confidentiality of the withheld documents  
16 and the legal basis for not furnishing the documents to the Defendants. The Government  
17 shall also submit these allegedly confidential documents to the court, *in camera*, for the  
18 court's review. In addition, the Government shall submit, for the court to review *in*  
19 *camera*, any documents withheld due to privilege where the Government is uncertain as  
20 to the applicability of the asserted privilege. After service, Defendants shall have **seven**  
21 **(7) days** to file and serve a response.

22 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and  
23 furnish copies to counsel.

24 **DATED** this 18th day of December 2006.

25 s/ Justin L. Quackenbush  
26 JUSTIN L. QUACKENBUSH  
27 SENIOR UNITED STATES DISTRICT JUDGE  
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